



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Workman Nydegger
1000 Eagle Gate Tower
60 East South Temple
Salt Lake City UT 84111

MAILED

SEP 14 2011

OFFICE OF PETITIONS

In re Application of :
Schermanz et al. :
Application No. 10/595,795 : DECISION ON PETITION
Filed: August 15, 2006 :
Attorney Docket No. 16785.1 :
:

This is a decision on the petition under 37 CFR 1.181, filed August 30, 2011, to withdraw the holding of abandonment.

On December 22, 2010, the Office mailed a non-final Office Action, which set a three-month shortened statutory period to respond. In the apparent absence of a timely filed response, the application became abandoned on March 23, 2011. A Notice of Abandonment was mailed on August 3, 2011.

In the present petition, petitioners asserted that they filed a timely response to the non-final Office Action via facsimile transmission on April 22, 2011. In support of the assertion, petitioners submitted copies of the transmittal, a 9 page reply in the form of an amendment and an authorization to charge the Deposit Account for any necessary fees including an extension of time fee, and the sending unit's report confirming transmission. The transmittal bears a certificate of facsimile transmission dated April 22, 2011.

Pursuant to 37 CFR 1.8:

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and,

(3) Includes a statement, which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

(c) The Office may require additional evidence to determine if the correspondence was timely filed.

After reviewing the record and the papers submitted on petition, the reply is considered timely filed on April 22, 2011, with the request for an extension of time for response within the first month (and fee). See 37 CFR 1.8 and 1.136(a). Accordingly, the petition is **granted**. The holding of abandonment is hereby withdrawn. The application will be restored to pending status in view of the fact that a response was timely filed with a certificate of facsimile on April 22, 2011.

The \$130.00 one-month extension of time fee will be charged to the Deposit Account as authorized.

This matter is being referred to Technology Center Art Unit 1731.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell
Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions